

CONNECTICUT
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ASSOCIATION



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Raised Bill 724
Public Hearing: 3-20-09

TO: MEMBERS OF THE JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 20, 2009

RE: OPPOSITION TO RAISED BILL 724 - AN ACT CONCERNING
IMMUNITY FOR CERTAIN VOLUNTEERS

I am Joseph R. Mirrione, the Immediate Past President of the CTLA and the following is the Association's position on Bill 724;

BACKGROUND:

This proposal suggests modification to C.G.S. §4-141, §4-165, and § §52-557m. It purports to extend the definition of "State officers and employees" to include volunteer(s), as defined in C.G.S. §4-61hh. Following this logic, the bill proposes to extend "scope of employment" to include the provisions of goods or services to any state agency by a volunteer, as defined in C.G.S. §4-61hh. Finally, bill 724 suggests providing volunteer(s) with immunity from personal liability in civil actions resulting from any negligence that occurred while rendering volunteer services within their scope of responsibility. This immunity is to extend to volunteers (other than a director, officer or trustee of a nonprofit organization) who provide service(s) to tax-exempt, nonprofit organizations within the state. The stated purpose of bill 724 is to encourage volunteerism without fear of personal liability for negligent acts or omissions while assisting a nonprofit organization.

REASONS FOR CTLA'S OPPOSITION:

1. Immunity will not foster competence and proficiency in volunteerism.

Volunteers should be expected to exercise the same level of competence, proficiency, and care in their position as do their paid counterparts. Immunizing volunteers from any aspect of accountability for negligence is a disincentive for them to produce quality work. Those seeking volunteer labor need to exercise due diligence in accepting volunteers and placing them in a position to perform only those services in which they are competent. With immunity for these individuals, comes substandard behavior without a means for recourse. There will be no checks or balances on the performance of a volunteer laborer. Immunizing a volunteer from liability

effectively absolves that person of any responsibility for their action(s). Volunteers who may fall under this proposed bill will be able to act negligently without any accountability whatsoever. For example, a member of the Connecticut Bar who engages in pro bono work is expected to exercise the same professional responsibility as if they were compensated. The potential liability for legal malpractice or grievances is never escaped. Volunteering attorneys, like any volunteer, should be subject to accountability for their mistakes and the harms that they cause. The CTLA respectfully submits that immunity for volunteers will only provide a safe-harbor for inadequacy.

2. Immunity will shield those injured from receiving just compensation.

Third parties injured by the negligence of volunteer workers will have no avenue for just compensation if bill 724 is approved. When a person is injured, the only available option is to seek justice from the responsible tortfeasor. Under this bill, the negligent actor is immune from liability. They escape any and all responsibility for their own negligence which has caused a loss. A victim can never be compensated for this. Thus, the individual's right to bring suit against a responsible party is stripped under an immunity statute. While the purpose of this bill may be to encourage volunteerism, the ill effects of volunteer immunity will be real. It will unduly prejudice those citizens whose lives have been altered by the negligence of another. It will affect those citizens who are at the greatest point of vulnerability. It will affect those citizens, who themselves, are in the greatest need of charity.

3. Immunity will not encourage volunteerism.

It is the CTLA's belief that the fear of a potential lawsuit is not a realistic factor that dissuades volunteerism. Individuals do not turn down volunteer work because of their potential exposure to personal liability. There are, rather, far more logical reasons why one may not embrace volunteerism. It is a difficult task in itself to gather individuals who are willing to work for free. It is an equally difficult task in itself to gather individuals who are willing to work for free. There are many personal and/or professional reasons why volunteerism may be suffering. The last reason why an individual may turn down volunteer work is potential liability.

4. Extending the definition of "State officers and employees" and "scope of employees" is overly broad.

The inclusion of volunteers and their work under the definitions of state employed workers and "scope of employment" is overly broad. This proposal will open the door to sovereign immunity for all volunteer workers assisting the state and acting within the scope of their employment. It is the CTLA's position that sovereign immunity is a doctrine which is intended to safeguard competent and trained individuals who are state employees acting under the direction and control of the state. Allowing untrained "volunteers", in general, to fit into this category is contrary to public policy. Such volunteers are not required to undergo the same training, prerequisites, policies, procedures, and screening that registered state employees are subjected to. For this reason, this proposal to be overly broad and may unduly prejudice the rights of Connecticut citizens.

WE RESPECTFULLY URGE YOU TO DEFEAT BILL 724.